

**Before the
DEPARTMENT OF COMMERCE NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION
and the
DEPARTMENT OF AGRICULTURE RURAL UTILITY SERVICE
Washington, D.C. 20230**

In the Matter of)	
)	
Implementation of Section 6001 of the American)	NTIA Docket No.
Recovery and Reinvestment Act of 2009)	
)	0907141137-91375-05
Implementation of Title I of the American)	
Recovery and Reinvestment Act of 2009)	

COMMENTS OF THE CITY OF CHICAGO

I. INTRODUCTION

The City of Chicago (“City”) submits these comments as an interested party in two respects: first, as a local unit of government advocating on behalf of its constituents; second, as an applicant in round one of Broadband Technology Opportunities Program (“BTOP”). Ultimately, the City’s overriding concern is to encourage the highest number of qualified proposals to serve Chicago’s “unserved” and “underserved” constituents, whether they be residential users, business users or anchor institutions.

Like all American cities, Chicago faces significant challenges in connecting its residents to a 21st century digital infrastructure. Many historically “underserved” populations in cities are as likely to be as disconnected as rural Americans. For example, 64% of African Americans, 58% of Hispanics and 57% of low-income people are online, as compared to 63% of rural residents.¹ Congress implicitly acknowledged the needs of urban areas by allocating funds to

¹ The Pew Research Center’s Internet & American Life Project Web site, “Demographics of Internet Users” section, available at: <http://www.pewinternet.org/Data-Tools/Download-Data/~media/Infographics/Trend%20Data/January%202009%20updates/Demographics%20of%20Internet%20Users%201%206%2009.jpg> (last visited April 13, 2009).

both the Rural Utilities Service *and* the National Telecommunications and Information Administration (“NTIA”).

To date, NTIA has been a responsible steward of BTOP. The City suggests the following changes to further meet the challenging task that Congress has set forth. First, NTIA should increase the transparency of the BTOP process. Second, NTIA should promote Middle Mile “Comprehensive Community” projects. Third, NTIA should define "broadband" relative to the proposed use and based upon speeds offered by representative technologies. Fourth, NTIA should adopt definitions of "unserved areas" and "underserved areas" that promote certainty of eligibility among potential applicants.

II. NTIA SHOULD INCREASE THE TRANSPARENCY OF THE BTOP PROCESS.

NTIA should apply the same information sharing policy consistently to all parties: applicants, challengers and reviewers. Fully transparent processes will deliver a range of benefits to NTIA: reducing the time required to disburse funds, improving accountability and public confidence, and encouraging sound broadband deployment projects and policies beyond BTOP.

With respect to applicants, the City supports NTIA’s tentative conclusion that it should post executive summaries of all proposals on a publicly accessible Web site. This proposal information can be particularly valuable to federal, state and local governments. For example, having knowledge of potential service areas will allow public works departments to proactively plan for potential impacts on rights-of-way and other infrastructure. With appropriate data, municipalities can also help to strengthen projects by helping applicants forge meaningful collaborations with community stakeholders that they may have otherwise missed.

NTIA should apply this same policy of transparency to the “challenge” process by publicly releasing all information supplied by service providers. As a matter of fairness, NTIA

should allow applicants – particularly those that have advanced to the “due diligence” phase – to provide additional information that directly addresses providers’ challenges. Sharing proposal and challenge data openly and early would allow applicants to respond quickly, with minimal impact on the overall review timeline. Further, the immediate presence of these broad datasets in the public realm can allow for better-targeted broadband initiatives by the public and private sector. To accommodate any interests of trade secrets that providers may claim, NTIA can adopt the methodology of the State Broadband Data and Development Grant Program. NTIA can aggregate availability and pricing information received via providers’ challenges.

Last, just as NTIA shares information from applicants and service providers, it should likewise increase transparency during future review processes, thereby openly conveying to the public that all proposals are expertly reviewed and allowing applicants to appropriately plan resources. NTIA should share detailed information about the review process, including expected timelines. At each decision point, NTIA should publicly announce the proposals that are advancing to the next step and those that are not. As their chances of success improve, applicants would be able to correspondingly ramp up their project resources to ensure speedy deployment if selected. Applicants that do not advance would also benefit by having the maximum time to rethink their approaches or divert resources to other projects.

III. NTIA SHOULD PROMOTE COMPREHENSIVE “MIDDLE MILE” STRATEGIES.

The City shares NTIA’s view that Middle Mile “Comprehensive Community” projects have tremendous potential to foster deployment of last mile services and, ultimately, contribute to community and economic growth. Projects like these can unleash the energy of community stakeholders across sectors to advance critical local and national goals, from environmental sustainability to education, healthcare to public safety.

In order for these projects to be successful, much less transformative, they must demonstrate benefits through concrete partnerships and projects, not only through concepts or high-level use cases. For example, applicants stating that “John Doe Academic Medical Center has invested \$10 million in tele-cardiology initiatives that require speeds of greater than 20 Mbps” should be given priority over applicants stating that “better Internet connectivity can support telemedicine.” NTIA should provide applicants with adequate time to build these partnerships before proposals are submitted, and should ensure that ownership and management structures support long-term collaborations. Projects should also clearly state provisions for lateral connections to these facilities, either through BTOP funding or operating expenses.

NTIA should take a broad view when evaluating the impact of Comprehensive Community projects. In addition to the number of community anchor institutions, NTIA should also consider the types of institutions served. To be considered sufficiently “comprehensive,” projects should meaningfully engage the range of institutions identified in the round one NOFA. For example, government agencies and other organizations with charters to act in the public interest (such as libraries, schools, city service centers) possess the requisite relationships, knowledge, and governance structures to make such projects successful. As stated above, meaningful engagement should include real partnerships, not simply passing institutions with broadband infrastructure.

Projects should also be “comprehensive” in the range of populations they serve, specifically targeting services to those groups that least likely to have access to broadband infrastructure or that face the strongest barriers to broadband adoption. A recent study reported that in Chicago – and likely many other major cities – this includes African Americans, Latinos,

low-income individuals and people living in blighted neighborhoods. The number of people in these and other “underserved” groups should be weighed by NTIA in evaluating projects.

Additionally, Congress’ inclusion of funding for fostering sustainable broadband adoption and expanding public computer centers was a recognition that ensuring meaningful broadband use by all Americans would require more than infrastructure. Accordingly, NTIA should consider Broadband Infrastructure proposals that also include corresponding Sustainable Broadband Adoption and Public Computer Centers proposals to be more “comprehensive” than projects that are solely focused on infrastructure. A proposal is also “comprehensive” when it appropriately connects with other federal funding streams to maximize the impact of federal investments.

Finally, NTIA should consider stakeholder involvement in planning the project and matching contributions to the extent that they are indicators of meaningful partnerships with community anchor institutions. NTIA should weigh variety as well as quantity when assessing the impact of matching funds, as financial or in-kind investments are often proxies for commitment to the project and future use of the network. For example, a project with a 25% matching contribution from six public safety, health care and educational institutions should be viewed more favorably than one with a 35% match from a single service provider.

IV. NTIA SHOULD DEFINE “BROADBAND” RELATIVE TO THE PROPOSED USE AND BASED UPON SPEEDS OFFERED BY REPRESENTATIVE TECHNOLOGIES.

NTIA should recognize the relative nature of the term “broadband.” In its September 29, 2009, the FCC recognized that different broadband applications have different speed requirements. If an applicant seeks to implement a comprehensive “Middle Mile” community that connects anchor institutions, a 768kbps/200kbps definition becomes simply irrelevant.

Accordingly, NTIA should adopt a definition of “broadband” that is relative to the proposed use. For example, NTIA should expect that applicants seeking to enable tele-health at anchor institutions will provide faster speeds than those seeking to offer basic broadband access levels to residential consumers.

To measure the access speeds that applicants seek to provide, NTIA should select representative technologies that meet those download and upload speed requirements. For example, an applicant seeking to connect hospitals could be required to employ a fiber-optic connection or *any technology offering similar speed*. NTIA’s expert reviewers can then discern whether an applicant’s proposed technology is equivalent in speed to the representative example. Such an approach remains technologically neutral because it allows for any technology that offers similar speeds. Moreover, such an approach negates the dispute between advertised and actual speeds.

V. NTIA SHOULD ADOPT DEFINITIONS OF “UNSERVED AREAS” AND “UNDERSERVED AREAS” THAT PROMOTE CERTAINTY OF ELIGIBILITY AMONG POTENTIAL APPLICANTS.

NTIA should recognize the initial findings of the FCC’s Omnibus Broadband Initiative in evaluating BTOP definitions. A common theme in recent hearings is that the National Broadband Plan (“NBP”), the State Broadband Data and Development Grant Program, and BTOP-BIP should leverage and incorporate each others’ efforts.

In its September 29, 2009 Commission Meeting, the FCC outlined the current state of data on broadband availability and adoption.² It recognized the disparity between currently available data and necessary data. In short, the FCC recognized that the only currently available

² Federal Communications Commission website, “Commission Open Meeting Presentation on the Status of the Commission’s Processes for Development of a National Broadband Plan,” available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf (last visited November 30, 2009).

and nationwide data is FCC Form 477 data. It recognized that this data is confidential, is provided by broadband providers and rests upon assumptions that overstate availability.

NTIA will promote the highest number of qualified applications by giving applicants a reasonable level of certainty in the eligibility of their applications. The expenses commensurate with a quality application are significant. As NTIA recognized in its first-round NOFA, “reasonable expenses” may include engineering costs, accountant fees and consultant fees.

The current BTOP definitions of “unserved area” and “underserved area” cannot provide all applicants with a reasonable level of certainty in their eligibility because much the of data supporting this eligibility is in the hands of existing broadband access providers and has not been released publicly.

To address this challenge, NTIA should expand these definitions to include additional characteristics that are ascertainable by reasonably available data. NTIA has already recognized that applicants should be able to prove that a proposed service area is “underserved” or “unserved” by the level of broadband adoption within that area; however, there is no publicly available data nationally at the required level of granularity on broadband adoption. Accordingly, NTIA should allow proof of adoption through the use of that area’s demographic data. The FCC, the Pew Center for the Internet and American Life, and many other surveys – including research commissioned by the City – have shown correlation between certain demographic characteristics and broadband adoption. The FCC’s September 29, 2009 report recognized that broadband adoption was lower than average for the following demographic groups: low-income (and therefore, implicitly public housing residents), uneducated, public housing residents, elderly and certain minorities. Accordingly, applicants should prove their case using data points about these populations that serve as proxies for broadband adoption data. Doing so would give potential

applicants reasonable confidence that their projects will not be deemed ineligible due to the potential for undisclosed challenges by broadband access providers.

Additionally, NTIA should allow applicants to prove that an area is “unserved” or “underserved” by reference to businesses as well as households. The current definitions measure residential users to determine eligible service areas that include both residential users *and* business users. Given that broadband is an economic driver and is just as important for business needs as it is for personal needs, and the focus of the Recovery Act on short and long term economic development, there is no reason to ignore “underserved” and “unserved” business users of broadband. In determining whether these potential users are “unserved” or underserved, NTIA should also consider businesses’ special needs for reliability and speed.

Further, NTIA should not penalize applicants for delivering indirect benefits to areas that may be considered served. For example, an applicant may seek to connect medical clinics in “underserved” neighborhoods with a hospital in a downtown area that could be considered served. In such a case, the applicant may be inclined to also make this network span available to residences, businesses and anchor institutions that it passes. However, if these areas are considered “served” and the applicant includes them as part of a “middle mile” instead of a “core” span, the project’s ranking will fall. Allowing applicants to serve areas such as these as incidental to its overall purpose of reaching “underserved” and “unserved” areas will ultimately extend open broadband infrastructure to more Americans.

Last, NTIA should impose additional requirements upon existing service providers that challenge applicants’ assertions of “unserved” and “underserved” areas. As the BTOP rules currently stand, providers may challenge service areas at their own discretion. Accordingly, one may reasonably conclude that providers will only submit data for proposed service areas when it

is in the providers' interests to do so. NTIA should adopt the procedural rule that, if an existing provider challenges one proposed service area as being served, all areas that the provider does not challenge are rebuttably presumed to be "underserved" and "unserved" areas. Providers are the sole owners of data that is highly relevant to the public interest. They should not be allowed to unfairly benefit from their unique position. In other words, they should not provide this data when helpful to their private interests and withhold this data when harmful to their interests.

VI. CONCLUSION

The City recognizes that NTIA faced a challenging and unprecedented task in selecting the first round of BTOP grants: awarding funds quickly to facilitate immediate economic recovery while making long-term investments in a program area that had previously received minimal attention from the federal government. Considering these circumstances, NTIA has been a responsible steward of the public's resources and trust. The City is grateful for the opportunity to comment on the first round of BTOP and is confident that if the changes described above are implemented in the second round, BTOP will connect with even more Americans, both as interested taxpayers and as recipients of broadband services. We view BTOP as a critical first step in ensuring that all communities, urban and rural alike, are meaningfully using the broadband services they need and deserve.

Respectfully submitted,

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